

HOUSE BILL 3421  
By McMillan

AN ACT to amend Tennessee Code Annotated, Title 56;  
Title 63; Title 67; Title 68 and Title 71, relative to  
health care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding  
the following as a new part 29:

67-4-2901. The title of this part is, and may be cited as the "Tennessee Employer  
Health Care Security Act".

67-4-2902. As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of revenue.

(2) "Department" means the department of revenue.

(3) "Employee" means an employee of the employer for the purposes of  
Tennessee Code Annotated, Title 50, Chapter 7.

(4) "Employer" means any employer who is subject to the provisions of  
Tennessee Code Annotated, Title 50, Chapter 7. In no event shall "employer"  
include an entity with fewer than two thousand five hundred (2,500) employees.

(5)

(A) "Gross receipts," for the purpose of taxes administered under  
this part, means total receipts before anything is deducted, but does not  
include receipts from incidental business when such incidental business,  
if separately carried on, would not be subject to a tax measured by gross  
receipts under the provisions of parts 2-6 of this chapter;

(B) "Gross receipts" does not include state and local sales and other taxes collected from customers and remitted to the respective taxing authorities by utilities.

(6) "Incidental business" means a business carried on separately and not a part of the business made the subject of privilege taxation.

67-4-2903. In addition to any other privilege tax imposed by this chapter, the general assembly declares that it is a taxable privilege in this state for an employer to engage in business and to use employees in such business.

67-4-2904. The tax herein imposed as a health security contribution is a state tax for state purposes only, and no county or municipality or taxing district shall have power to levy any like tax. The tax is an accrued tax and is imposed for the exercise of the specified privilege during the period that coincides with the tax year covered by the required return. The privilege tax established in this part shall be collected by the commissioner of revenue and deposited to the state general fund.

67-4-2905.

(a) The supervision and collection of the tax imposed by this part is under the direction of the department of revenue, and the department has the authority and power to prescribe forms upon which entities liable for the tax imposed shall make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such entities.

(b) The commissioner may, within the commissioner's discretion, require any taxpayer to file with its Tennessee franchise tax return, a copy of the federal tax forms filed with the internal revenue service for the same tax year.

(c) All employers subject to the tax imposed by this part shall register with the department of revenue by completing and filing a registration information

form prescribed by the department. Such form shall be filed with the department within sixty (60) days after January 1, 2007, or within fifteen (15) days after the date the employer becomes subject to the tax, whichever date occurs last.

67-4-2906.

(a) This section establishes a health security contribution as a privilege tax for certain employers in this state.

(b) Each employer, except those employers who employ two thousand five hundred (2,500) or fewer employees, shall pay, as required by this part, a medical security contribution for each employee computed by multiplying the wages paid each employee by twelve percent (12%). For the purposes of this section, "employee" shall not include the following employees of any employer:

(1) any employee who has been employed by such employer for fewer than ninety (90) days from date of hire;

(2) any employee who normally works for fewer than thirty (30) hours per week; provided, however, that any head of household who has dependent children living at home and is working at least twenty (20) hours per week or any employee having worked at least five hundred twenty (520) hours in the prior six (6) months shall be considered to be an employee for the purposes of this section;

(3) any employee who is hired to perform a service for a period of less than five (5) months;

(4) any seasonal agricultural employee, who for the purposes of this section shall be defined as an individual who is employed in agricultural employment of a seasonal or other temporary nature; and

(5) any employee who is covered by a group or nongroup health benefit plan which is financed without any participation by the employer, who is enrolled in the medicare program, or who is covered by a government operated medical assistance program.

Each employee as defined in this part shall be presumed to be an employee as included in this section unless the employer certifies to the commissioner, in such form and manner as the commissioner may require, that such employee should not be included under the provisions of this section. Each employer may require any employee to verify the employee's health insurance status pursuant to such rules and regulations as the director shall promulgate. No employer may require an applicant for employment to disclose the applicant's health insurance status or that of the applicant's spouse, dependents, or other family members. In no case may an employer discriminate against such applicant on the basis of said applicant's health insurance status. Any person aggrieved by a violation of the preceding two sentences may institute within three (3) years of such violation a civil action for injunctive relief and any damages thereby incurred. Any employer found to be in violation pursuant to the action of the aggrieved person shall reimburse such reasonable attorney fees and court costs incurred in the protection of rights granted as shall be determined by the court.

(c) An employer may deduct from the amount owed for each employee under subsection (b) its average expenses per employee for providing health insurance coverage or other health care benefits for its employees, allowable for the current quarter by the internal revenue service as a deductible business expense; provided, however, that any nonincorporated employer may deduct from the amount owed for each employee under subsection (b) its average

expenses per employee for providing health insurance coverage or other health care benefits for its employees as reported and allowed pursuant to rules and regulations promulgated by the director; and provided, further that such deduction for any employer shall not reduce the contribution for any employee below zero.

(d)

(1) For the purposes of this section, the term “wages” shall not include that part of remuneration which, after remuneration equal to the medical security wage base with respect to employment with such employer has been paid to an individual during the calendar year, is paid to such individual during such year. For the purposes of this paragraph, remuneration shall include remuneration paid to an individual during the calendar year with respect to employment with a transferring employer, as that term is defined by the commissioner by rules.

(2) For the purposes of this section, the term “medical security wage base” shall mean twenty-three thousand dollars (\$23,000) for the calendar years 2007 and 2009, inclusive. For each subsequent calendar year the medical security wage base shall equal the product of (i) the medical security wage base for the previous calendar year and (ii) the sum of one and the health insurance inflation rate for the then previous calendar year, as determined by the commissioner by rule.

(e)

(1) The provisions of this section shall not apply to an employer newly subject to this chapter, until it has been an employer for not less than a twelve (12) consecutive months’ period.

(2) During the first calendar year in which this section applies to an employer newly subject to this chapter pursuant to subdivision (1), such employer's medical security contribution shall be computed by substituting in subsection (b) the words "four per cent" for the words "twelve per cent".

(3) During the second calendar year in which this section applies to an employer newly subject to this chapter pursuant to paragraph (1), such employer's medical security contribution shall be computed by substituting in subsection (b) the words "eight per cent" for the words "twelve per cent".

67-4-2907.

(a) The department shall, subject to appropriation, negotiate with and purchase, on such terms as it deems to be in the best interest of the department and its enrollees, from one or more insurance companies, hospital service corporations, medical service corporations, or health maintenance organizations, a policy or policies of group general or blanket insurance providing hospital, surgical, medical, and other health insurance benefits covering the following persons: (1) residents of the state, and their dependents, who are receiving benefits under title 50, chapter 7 and who are not enrolled in health insurance plans, self-insurance health plans, or medical assistance programs, (2) employees and their dependents not eligible for group health insurance partially or fully paid for by employers and who are not enrolled in any other health insurance plans, self-insurance health plans, or medical assistance programs, and (3) all other residents of the state not enrolled in health insurance plans, self-insurance health plans, or medical assistance programs.

(b) The department shall execute all agreements or contracts pertaining to said policies or any amendments thereto for and on behalf and in the name of the department. The department may negotiate any contract for such term not exceeding three (3) years as it may in its discretion deem to be the most advantageous to the department and its enrollees; provided, however, that the department shall endeavor to contract with such insurance companies, a hospital service corporation, or medical service corporations only for managed health care plans or for health insurance plans which employ other methods to reduce costs of health care services; provided, further, that the department shall ensure that every enrollee shall have a choice of at least two (2) plans providing health care insurance benefits; and provided, further, that not more than thirty percent (30%) of the enrollees may be enrolled in a health insurance plan of a single health insurance company, hospital service corporation, or health maintenance organization.

(c) The department shall promulgate regulations regarding eligibility criteria, enrollment, and termination policies. The department shall establish procedures consistent with the provisions of title 56 by which individuals who participate or are seeking to participate in the health insurance program of the department may appeal determinations of noneligibility, enrollment, and termination. The department shall allow, on an annual basis, an opportunity for enrollees to transfer their enrollments among participating health insurance plans.

(d) The department shall establish a schedule of premium contributions, copayments, deductibles, or coinsurance amounts to be paid by individual enrollees for any policy or policies purchased by the department. The schedule

shall establish a sliding scale of payments for enrollees based on family income and size and any other factor or factors determined to be relevant or appropriate by the department; provided, however, that such schedule shall provide for enrollees to pay one hundred percent (100%) of such premium contributions if their income substantially exceeds the non-farm poverty guidelines of the United States office of management and budget. The department shall establish procedures by which any enrollee may appeal the determination of his contribution.

(e) The department shall require that any insurance company, hospital service corporation, medical service corporation, or health maintenance organization, shall provide a reasonable range of health care services to enrollees, shall establish grievance procedures which are approved by said department and, in the case of actions taken directly by the department, the department shall establish its own grievance procedures. Such procedures shall not be subject to the requirements of title 56.

(f) Any health insurance plan provided by the department to its enrollees through a contract with a health insurance company, hospital service corporation, medical service corporation, or health maintenance organization, shall provide a reasonable range of health care services to enrollees, shall ensure access to an adequate range of health care providers, and shall include any mandated benefits otherwise required by law. Any such health insurance plan which constitutes a managed health care plan shall provide, at a minimum, the following benefits: inpatient and outpatient acute hospital services, inpatient and outpatient physician services, diagnostic and screening tests, preventive care, prenatal and well-baby care; medically necessary emergency health services;



and all other benefits which health maintenance organizations are required by law to provide.

(g) The department may, consistent with business practices in the health insurance industry, pay in advance for any health insurance plan purchased from a health insurance company, hospital service corporation, medical service corporation, or health maintenance organization.

(h) The provisions of this section are subject to appropriation in the general appropriations act and do not constitute an entitlement to any individual.

67-4-2908. The department is authorized to develop by rule a means for employers to make estimated periodic payments of the tax on a monthly or quarterly basis and to provide for additional payments, refunds or penalties with the filing of the required return. Credits against any tax imposed by this part shall be pursuant to Section 67-4-2911.

67-4-2909. The department may authorize any filings required by this part to be attached to an employer's franchise and excise tax returns.

67-4-2910. The privilege tax return required by this part shall be filed in the same manner as provided in § 67-4-2015 for franchise and excise tax returns.

67-4-2911.

(a) The commissioner is empowered to certify to the secretary of state the name of any taxpayer who fails or refuses to file any statement or tax return required by this part, or to pay any fee or tax herein required. No certification shall be issued until such statement, return, or tax has remained delinquent for a period of ninety (90) days.

(b) At the time of such certification to the secretary of state, the commissioner shall give notice to the taxpayer of the action taken. Thereupon,

the charter or certificate of such taxpayer or its domestication in Tennessee shall stand as automatically dissolved or revoked, and the secretary of state shall note such revocation or dissolution upon the secretary of state's records.

(c) At any time after the date of revocation or dissolution, such charter or certificate or domestication may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state; provided, that the title has not been taken by another taxpayer.

67-4-2912.

(a) There is hereby established a general reserve to be allocated by the general appropriations act which shall be known as the "Tennessee health care security fund." Moneys from the fund may be expended to fund activities authorized by this part. Any resources deposited in this fund shall remain in the reserve until expended for purposes consistent with this part and shall not revert on any June 30, but shall remain available for expenditure in subsequent fiscal years.

(b) In addition to any general revenues allocated for deposit into the fund by the general appropriations act, any revenues generated by health security contribution imposed by this part as a privilege tax shall be deposited in this fund.

67-4-2913. The commissioner of revenue is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, Sections 1 and 3 shall take effect July 1, 2005 and Section 2 shall take effect on January 1, 2006, the public welfare requiring it.